



March 22, 2000

Ms. Sarajane Milligan  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2000-1119

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134014.

Harris County (the “county”) received a request for an internal affairs file and other information regarding an incident involving a named individual as well as other information “relating to allegations that persons were injured while in the custody of Harris County law enforcement personnel” for the period 1995 to the date of the request. You seek to withhold the information responsive to the request under sections 552.101, 552.103, 552.108, 552.111 and 552.117 of the Government Code. You have submitted the requested information, except that with regard to the part of the request seeking other information regarding allegations of injuries while in county custody, you have submitted the information pertaining to the individual named in the request as a representative sample.<sup>1</sup>

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party[.]

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<sup>1</sup>In reaching our conclusion, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, (Tex. App.-- Austin 1997, no pet.); Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You advise that the individual named in the request was injured while in the custody of county law enforcement personnel. You submit a notice of claim that the requestor, the attorney for that individual, has filed with the county in connection with the incident. You say that the notice of claim complies with the Texas Tort Claims Act. Having reviewed your arguments and the information at issue, it is our opinion that you have established that the requested information relates to litigation to which the county reasonably anticipates it will be a party. Accordingly, you may, except as noted below, withhold the information responsive to the request under section 552.103(a).

Please note that, absent special circumstances which you have not demonstrated here, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the opposing party in the anticipated litigation has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 (1986). The applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

We note too that absent special circumstances which you have not shown here, "basic information" from criminal law enforcement records may not be withheld under section 552.103(a). *See* Open Records Decision Nos. 597 (1991), 127 (1976). The county must release these types of information responsive to the request in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Since we have disposed of this matter under section 552.103(a), we need not address your other claimed exceptions except to note that the information at issue which is not protected under section 552.103(a) would not be protected under the other claimed exceptions either.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

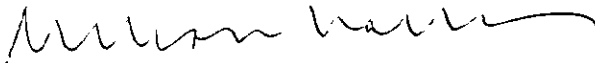
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 134014

Encl. Submitted documents

cc: Mr. John W. Tavormina  
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(w/o enclosures)